*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.13781 OF 2006

% 7-07-2006

#Mekala Bhaskar. .. PETITIONER

Versus

$The Returning Officer/Dy.Director of Social Welfare Department, Kurnool, Kurnool District and 3 others. .. RESPONDENTS

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>HEAD NOTE:

! Counsel for petitioner : Sri anaamedala Ravindra Kumar

^ Counsel for respondents 1 to 3: Sri V.V.Prabhakar Rao

?CASES REFERRED :

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WRIT PETITION NO.13781 of 2006

DATED: 07.07.2006

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ORDER:

Heard Sri Kanakamedala Ravindra Kumar, learned counsel representing the writ petitioner and Sri Prabhakar Rao, learned counsel representing respondents 1 to 3.

2. The Writ Petition is filed for a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in not declaring and granting the Election Certificate to the petitioner and declaring the 4th respondent got elected from Aluru Zilla Parishad Territorial Constituency, Kurnool District by suppressing the original results as highly illegal, arbitrary, unilateral, mala fide, contrary to Rules 62 and 63 of the provisions of the A.P. Panchayat Raj (Conduct of Elections of Members and Sarpanch of Gram Panchayats, Members of Mandal Parishads and Members of Zilla Parishads) Rules, 2006, hereinafter in short referred to as the Rules, and violative of the provisions of Constitution of India and consequently direct the 1st respondent to declare the petitioner got elected from Aluru Zilla Parishad Territorial Constituency, Kurnool District and grant Election Certificate to the petitioner by setting aside the Election Certificate issued to 4th respondent by the 1st respondent and pass such other suitable orders.

3. Sri Kanakamedala Ravindra Kumar, learned counsel representing the petitioner would submit that this is not a case where the petitioner to be driven to the Election Tribunal, but this is a typical

case where Rules 62 and 63 of the Rules aforesaid have been violated and instead of following the procedure as laid down by the Rules, the Returning Officer without even ordering recounting, declared 4th respondent as duly elected. In such a case the Writ Court can definitely interfere under Article 226 of the Constitution of India. The learned counsel also had drawn the attention of this Court to the relevant provisions of A.P. Panchayat Raj Act, 1994, hereinafter in short referred to as Act, and also the relevant Rules framed thereunder.

4. On the contrary, Sri Prabhakar Rao, learned counsel representing respondents 1 to 3 would contend that relying upon certain news items, the petitioner filed the present Writ Petition. It is not known what actually had transpired and these are all disputed questions of fact, which cannot be decided by the Writ Court. The learned counsel also had drawn the attention of this Court to Section 233 of the Act and Rule 12 of A.P. Panchayat Raj Election Tribunal (in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995, hereinafter in short referred to as Tribunal Rules. The learned counsel also would contend that in view of Rule 12(d)(iv) of the Rules, it is clear that non-compliance of any of the provisions of the Act or the Rules or orders made under the Act can be gone into by the Election Tribunal and hence, since the petitioner is having an effective alternative remedy, this Court cannot go into the factual controversies and the remedy is else where.

5. Heard both the learned counsel.

6. The matter is coming up for admission today. The facts in brief are as hereunder:

It is stated in the affidavit filed in support of the Writ Petition that the 3rd respondent issued Notification dated 10.6.2006 for conducting the elections to Zilla Parishad Territorial Constituencies and Mandal

Parishad Territorial Constituencies and the petitioner had contested to the office of the post of Aluru Zilla Parishad Territorial Constituency, Kurnool District, on behalf of Telugu Desam Party (TDP) and the 4th respondent contested on behalf of Indian National Congress Party. The elections had taken place on 28.6.2006. It is further stated that the 1st respondent commenced the counting on 4.6.2006 and the petitioner secured 9960 votes whereas the 4th respondent 9864 votes only after completion of process of counting of the entire votes. It is also stated that the 1st respondent declared in the counting hall that the petitioner was duly elected with a majority of 96 votes in the presence of all the counting agents and the Chief Counting Agent and all parties and the petitioner were asked to wait in the counting hall in order to issue Election Certificate in his favour. Further it is stated that no person objected to the above declaration, as there is absolutely no dispute till that period as regards the counting of the votes. In the meanwhile, the 4th respondent came to the counting hall with his henchmen and demanded the 1st respondent not to issue Election Certificate to the petitioner and insisted for recounting of the votes. Within a short time, the Revenue Divisional Officer, Adoni, and Deputy Superintendent of Police, Adoni, reached the counting hall and discussed with the 1st respondent. After some time the 1st respondent without issuing Election Certificate to him, left the counting hall and disappeared without abiding to the Rules 62 and 63 of the Rules referred to supra by issuing the Election Certificate to him and displaying the results on the notice board. In the said situation, Sri Mareppa, the Minister for Lift Irrigation, came to the Government Junior College premises, Aluru and issued instructions to his henchmen and officers and went away. One Sri Narayana, counting observer of the 3rd respondent was also present at that time and for the reasons best

known to them, all of them left the place. The petitioner came to know through the newspapers only that the 1st respondent declared that the 4th respondent was elected from Aluru Zilla Parishad Territorial Constituency. It is further stated that the electronic media during the relevant point of time telecast that the petitioner was elected by majority of 96 votes from Aluru ZPTC and the 4th respondent was defeated and the same was flashed till early hours of 5.6.2006. It is further stated that the 4th respondent pressurized the 1st and 2nd respondents on nigh of 4.6.2006. The same was recorded by MAA Telugu Channel. The 4th respondent also was given an interview with MAA Television channel and demanded recounting since the petitioner was declared elected from Aluru ZPTC. It is stated that the petitioner also had asserted that he won the seat with 96 votes. The main grievance of the petitioner as can be seen from several of the details, which had been narrated at paragraphs 6 to 10 of the affidavit filed in support of the Writ Petition, is that the Returning Officer had not followed the Rules governing the field and in the peculiar facts and circumstances instead of driving the petitioner to an Election Petition, the said questions can be decided by the Writ Court.

7. The Rules of 2006, in GO.Ms.No.142, Panchayat Raj and Rural Development (Elections) Department, dated 3.5.2006, were made in exercise of powers under Section 268 read with Sections 8, 11, 12, 13, 14, 19B, 151, 156, 179, 201A, 230A and 230B of the Act.

8. Rules 62 and 63 of the said Rules read as hereunder:

> "62. **Declaration of result of election and return of election**:
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> 1) The Returning Officer shall, subject to the provisions of Rule 61 insofar as they apply to any particular case—
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> (a) Declare in Form-XXVII the candidate to

whom the largest number of valid votes have been given to be elected for the seat and send signed copies thereof to the State Election Commission, Election Authority and District Election Authority;

(b) Complete and certify the return of election of Form-XXVII and send copies thereof to the State Election Commission, Election Authority and District Election Authority;

(2) Any candidate or his agent shall, on application be permitted to take a copy of an extract of the return of election in Form-XXVIII.

63. **Grant of Election Certificate**:

As soon as may be after a candidate has been declared by the Returning Officer under Rule 16 or, as the case may be, under Rule 62 to have been elected, the Returning Officer shall grant such candidate a Certificate of Election in Form-XXIX and obtain from the candidate an acknowledgement of its receipt duly signed by him immediately".

9. On a prima facie reading of the Rules and also the facts which had been narrated in the affidavit filed in support of the Writ Petition, the grievance of the petitioner appears to be contravention of these Rules. Rule 12(d)(iv) of the Tribunal Rules specifies that when in the opinion of the Election Tribunal that the result of election insofar as it concerns of returned candidate has been materially affected, by any non-compliance of the provisions of the Act or any Rules or Orders made under the Act, the Election Tribunal can decide such questions. In the light of this, both the counsel made submissions at length. The learned counsel for the petitioner contending that it is not a case where the petitioner to be driven to the Election Tribunal and on the contrary the counsel representing respondents 1 to 3 contending that an effective alternative remedy is available.

10. It is no doubt true that the grievance of the petitioner is that the Rules in question referred to supra had been contravened or violated. The other factual details which had been narrated, the news items and

the other material placed before the Court, at the best would reflect certain facts pleaded by the petitioner, but this Court is not inclined to express any opinion inasmuch as the petitioner is having an effective alternative remedy by way of an Election Petition to the Election Tribunal as referred to supra.

11. In view of the above, the Writ Petition is devoid of merit and accordingly the same shall stand dismissed at the stage of admission. No costs. It is needless to say that petitioner is at liberty to avail the alternative remedy referred to supra.

07.07.2006

SSR